

**INDIANA BOARD OF TAX REVIEW**  
**Small Claims**  
**Final Determination**  
**Findings and Conclusions**

**Petitions:** 64-004-18-1-5-01087-19  
64-004-18-1-5-01251-19  
64-004-18-1-5-01252-19  
64-004-18-1-5-01253-19  
64-004-18-1-5-01254-19  
64-004-18-1-5-01255-19

**Petitioner:** Roshanku, LLC

**Respondent:** Porter County Assessor

**Parcels:** 64-10-19-276-007.000-004  
64-10-19-276-008.000-004  
64-10-19-276-009.000-004  
64-10-19-276-010.000-004  
64-10-19-276-011.000-004  
64-10-19-276-012.000-004

**Assessment Year:** 2018

The Indiana Board of Tax Review (“Board”) issues this determination, finding and concluding as follows:

**PROCEDURAL HISTORY**

1. Roshanku, LLC contested the 2018 assessments of its properties located at 2411 Beech Street, Suites G-L in Valparaiso. The Porter County Property Tax Assessment Board of Appeals (“PTABOA”) issued determinations upholding the Assessor’s tax cap allocations and valuing the properties as follows:

Parcel	Land Cap 2	Land Cap 3	Improvements Cap 2	Improvements Cap 3	Total Assessment
276-007	\$9,000	\$5,900	\$27,600	\$18,500	\$61,000
276-008	\$9,000	\$5,900	\$27,600	\$18,500	\$61,000
276-009	\$9,000	\$5,900	\$27,600	\$18,500	\$61,000
276-010	\$9,000	\$5,900	\$27,600	\$18,500	\$61,000
276-011	\$9,000	\$5,900	\$27,600	\$18,500	\$61,000
276-012	\$9,000	\$5,900	\$40,700	\$27,200	\$82,800

2. Roshanku timely filed Form 131 petitions with the Board and elected to proceed under our small claims procedures. On October 20, 2020, Ellen Yuhan, our designated administrative law judge (“ALJ”) held a telephonic hearing on Roshanku’s petitions. Neither she nor the Board inspected the properties.

3. Sunil Dhoot appeared for Roshanku, LLC. Attorney Robert M. Schwerd appeared for the Assessor. Dhoot and Mary Dambek, the Assessor’s Real Estate Director, were sworn as witnesses.

**RECORD**

4. The official record for this matter contains the following:
  - a. Petitioner Exhibit 1: Department of Local Government Finance (“DLGF”) Circuit Breaker Caps Fact Sheet
  - Petitioner Exhibit 2: Property Tax Appeal Presentation
  - Petitioner Exhibit 3: Form 134 for parcel 64-10-19-276-007.000-004
  - Petitioner Exhibit 4: Form 134 for parcel 64-10-19-276-008.000-004
  - Petitioner Exhibit 5: Form 134 for parcel 64-10-19-276-009.000-004
  - Petitioner Exhibit 6: Form 134 for parcel 64-10-19-276-010.000-004
  - Petitioner Exhibit 7: Form 134 for parcel 64-10-19-276-011.000-004
  - Petitioner Exhibit 8: Form 134 for parcel 64-10-19-276-012.000-004<sup>1</sup>
  
  - Respondent Exhibit A: Deputy Assessor’s calculations
  - Respondent Exhibit B: Tax Bill Estimator with 60% cap 2
  - Respondent Exhibit C: Tax Bill Estimator with 40% cap 3
  - Respondent Exhibit D: Tax Bill Estimator with 83% cap 2
  - Respondent Exhibit E: Tax Bill Estimator with 17% cap 3
  - Respondent Exhibit F: Tax cap information for subject properties
  - Respondent Exhibit G: Property record card, page 1, for Parcel 64-10-19-276-008.000-004
  
  - Respondent Exhibit H: DLGF tax cap guidelines
  - Respondent Exhibit I: Notes and income calculations for tax caps
- b. The record for the matter also includes the following: (1) all pleadings, briefs, motions, and documents filed in these appeals; (2) all notices and orders issued by the Board or our ALJ; and (3) an audio recording of the hearing.

**BURDEN OF PROOF**

5. Generally, a taxpayer seeking review of an assessing official’s determination has the burden of proof. Indiana Code § 6-1.1-15-17.2 creates an exception to that general rule and assigns the burden of proof to the assessor in two circumstances—where the assessment under appeal represents an increase of more than 5% over the prior year’s assessment, or where it is above the level determined in a taxpayer’s successful appeal of the prior year’s assessment. I. C. § 6-1.1-15-17.2 (b) and (d).

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<sup>1</sup> Roshanku requested the Board also consider the income approach attached to its Form 131. We note that it was also entered as Respondent Exhibit I.

6. Here, Roshanku did not argue that the burden of proof should shift to the Assessor under Indiana Code § 6-1.1-15-17.2. Accordingly, Roshanku bears the burden of proof.

### OBJECTIONS

7. The Assessor objected to Petitioner Exhibits 3-8 because they were not exchanged five days prior to the hearing. However, under our small claims procedures, a party is not required to provide copies of documentary evidence or a witness list unless the opposing party requested it at least ten (10) business days prior to the hearing. 52 IAC 4-8-2. Because the Assessor admitted that he did not request the exhibits, we overrule the objection.

### SUMMARY OF CONTENTIONS

8. Roshanku's case:
  - a. Roshanku wants to make sure that its properties are valued based on market value-in-use and that their assessments are properly allocated between the 2% and 3% tax caps.<sup>2</sup> The subject properties consist of six residential apartments with attached garages that qualify for the 2% tax cap and additional garages and office space that qualify for the 3% tax cap. The allocation of their assessed values for purposes of applying the tax caps should be based on the income derived from their use, not their square footage. *Dhoot testimony; Pet'r Ex. 1.*
  - b. When Roshanku purchased the properties, Dhoot spoke with the Assessor and they agreed that the valuation of the properties would be based on their gross income, minus expenses, divided by the loaded capitalization rate. In 2016, 79% of their assessed values received the 2% tax cap and 21% received the 3% tax cap. *Dhoot testimony; Pet'r Exs. 3-8.*
  - c. For 2018, Roshanku calculated the income for each of its six properties to be \$60,426 for the portions receiving the 2% residential tax cap and \$18,120 for the portions receiving the 3% non-residential tax cap. Expenses were 48% for both tax cap classifications, producing net incomes of \$31,316 and \$9,399 for the portions receiving the 2% and 3% tax caps, respectively. Using a loaded capitalization rate of 11.21% for the income from portions receiving the 2% tax cap and 15% for portions receiving the 3% tax cap results in values of \$279,365 and \$62,659, respectively. Thus, 81.68% of the properties' total value of \$342,024 is from the portions receiving the 2% tax cap and 18.32% is from the portions receiving the 3% tax cap. Roshanku is therefore requesting that the Board apply the 2% tax cap to 80% of the properties' total assessed value and the 3% tax cap to the remaining 20%. *Dhoot testimony; Pet'r Ex. 2.*

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<sup>2</sup> We infer Roshanku was referring to the tax credits provided by Ind. Code § 6-1.1-20.6-7.5, which is commonly known as the property tax cap statute.

d. The apartments are 880 square feet, not 590 square feet, but Dhoot would have to remeasure to be sure. The larger area would change the percentages the Assessor has classified as 2% tax cap and 3% tax cap. *Dhoot testimony.*

9. The Assessor's case:

- a. Roshanku wants the tax cap allocations to be based on income, but the Assessor used square footage. The building's 1<sup>st</sup> floor is 6,720 square feet and its 2<sup>nd</sup> floor is 3,936 square feet. The upper floor consists of six apartments and each has a garage of approximately 264 square feet located on the 1<sup>st</sup> floor. The apartments and their respective garages are considered residential and receive the 2% tax cap. The other garages and the office space are classified as non-residential and receive the 3% tax cap. The percentage calculations show that 53% of the building qualifies for the 2% cap and 47% of the building qualifies for the 3% cap, but the Assessor rounded up to 60% and 40% to be fair to the taxpayer. *Dambek testimony; Resp't Exs. A-D.*
- b. Roshanku did not disagree with the way the building was assessed until recently. The back area is clearly two stories and then it slopes down from there. There is no method to assess the sloping area, so the Assessor does not count it. *Dambek testimony.*

#### ANALYSIS

10. Roshanku presented two issues for our review. First, it argues that the Assessor incorrectly allocated its properties' assessed values between the applicable tax caps. Second, it argues that its properties' 2018 assessments are too high. We address each claim in turn.

#### Tax Caps

11. Indiana Code § 6-1.1-20.6-7.5, also known as the property tax cap statute, limits a property owner's tax liability to a percentage of the property's gross assessment. The amount of the credit depends on the property type:

Sec. 7.5 (a) A person is entitled to a credit against the person's property tax liability for property taxes first due and payable after 2009. The amount of the credit is the amount by which the person's property tax liability attributable to the person's:

- (1) homestead exceeds one percent (1%);
- (2) residential property exceeds two percent (2%);
- (3) long term care property exceeds two percent (2%);
- (4) agricultural property exceeds two percent (2%);
- (5) nonresidential real property exceeds three percent (3%); or
- (6) personal property exceeds three percent (3%);

of the gross assessed value of the property that is the basis for determination of property taxes for that calendar year.

12. Roshanku claims that the Assessor erred in allocating its properties' assessed values into the 2% and 3% tax caps based on the relative amount of square footage being put to residential use versus commercial use. It argues that the proper way to allocate its properties' assessed values between the applicable tax caps is by looking to the percentage of net income it derived from each type of use during 2018. However, Roshanku failed to cite to any rules, regulations, statutes, or case law supporting its position. Absent clear guidance to the contrary, we are highly skeptical that the legislature intended to burden county officials with creating individualized income approaches to be able to correctly allocate tax caps for all properties with more than one classification code or applicable circuit breaker cap.
13. Roshanku also briefly argues that the square footage figures the Assessor relied on are incorrect. But it did not provide any evidence to support its contention. Statements that are unsupported by probative evidence are conclusory and of no value to the Board in making its determination. *Whitley Products, Inc. v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113, 1118 (Ind. Tax Ct. 1998).

### **2018 Assessment**

14. The goal of Indiana's real property assessment system is to arrive at an assessment reflecting the property's true tax value. 50 IAC 2.4-1-1(c); 2011 REAL PROPERTY ASSESSMENT MANUAL at 3. "True tax value" does not mean "fair market value" or "the value of the property to the user." I.C. § 6-1.1-31-6(c), (e). It is instead determined under the rules of the Department of Local Government Finance ("DLGF"). I.C. § 6-1.1-31-5(a); I.C. § 6-1.1-31-6(f). The DLGF defines "true tax value" as "market value in use," which it in turn defines as "[t]he market value-in-use of a property for its current use, as reflected by the utility received by the owner or by a similar user, from the property." MANUAL at 2.
15. All three standard appraisal approaches—the cost, sales-comparison, and income approaches—are "appropriate for determining true tax value." MANUAL at 2. In an assessment appeal, parties may offer any evidence relevant to a property's true tax value, including appraisals prepared in accordance with generally recognized appraisal principles. *Id.* at 3; *see also Eckerling v. Wayne Twp. Ass'r*, 841 N.E.2d 674, 678 (Ind. Tax Ct. 2006) (reiterating that a market value-in-use appraisal that complies with the Uniform Standards of Professional Appraisal Practice is the most effective method for rebutting the presumption that an assessment is correct). Regardless of the appraisal method used, a party must relate its evidence to the relevant valuation date. *Long v. Wayne Twp. Ass'r*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). Otherwise, the evidence lacks probative value. *Id.* The valuation date for this appeal is January 1, 2018. Ind. Code § 6-1.1-2-1.5(a).

16. As explained above, Roshanku has the burden of proving the correct market value-in-use for each of its six properties. It offered an income capitalization approach prepared by Dhoot and sought to have its properties' 2018 assessments reduced to a total value of \$342,024. However, Dhoot's analysis relied solely on Roshanku's own rental rates. Although examining a property's actual rent is an important step, relying on it exclusively is inappropriate when appraising a property's market value-in-use. *See Indiana MHC, LLC v. Scott Cty. Ass'r*, 987 N.E.2d 1182, 1185-86 (Ind. Tax Ct. 2013) (citing THE APPRAISAL OF REAL ESTATE 493, 501, 509, 511-12 (12th ed. 2001) ("[T]o provide a sound value indication under the income capitalization approach, one must not only examine the historical and current income, expenses and occupancy rates for the subject property, but the income, expenses, and occupancy rates of comparable properties in the market as well.") (emphasis in original)). Similarly, Roshanku offered no market support for its expense estimates or its capitalization rates. We conclude that these errors deprive Roshanku's income capitalization approach of any probative value.
17. Because Roshanku did not offer any probative market-based evidence to demonstrate its properties' correct market values-in-use, it failed to make a prima facie case for lowering the 2018 assessments. Where a Petitioner has not supported its claim with probative evidence, the Respondent's duty to support the assessment with substantial evidence is not triggered. *Lacy Diversified Indus. v. Dep't of Local Gov't Fin.*, 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003).

#### FINAL DETERMINATION

In accordance with the above findings of fact and conclusions of law, we find for the Assessor and order no change to the properties' 2018 tax cap allocations or assessments.

ISSUED: January 11, 2021

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Chairman, Indiana Board of Tax Review

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Commissioner, Indiana Board of Tax Review

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Commissioner, Indiana Board of Tax Review

**- APPEAL RIGHTS -**

You may petition for judicial review of this final determination under the provisions of Indiana Code § 6-1.1-15-5 and the Indiana Tax Court's rules. To initiate a proceeding for judicial review you must take the action required not later than forty-five (45) days after the date of this notice. The Indiana Code is available on the Internet at <<http://www.in.gov/legislative/ic/code>>. The Indiana Tax Court's rules are available at <<http://www.in.gov/judiciary/rules/tax/index.html>>.